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11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

13 In re

14 COLDWATER DEVELOPMENT, LLC,

16 Debtor.

Case No. 2:21-bk-10335-BB

Chapter 11

Jointly Administered With:

Case No. 2:21-bk-10336-BB

**GIVE BACK LLC'S LIMITED RESPONSE
TO CHAPTER 11 TRUSTEE'S MOTION
FOR ORDER APPROVING RETENTION
OF THREESIXTY ASSET ADVISORS,
LLC AND WFS INC. DBA TRANZON
ASSET STRATEGIES AS
AUCTIONEERS PURSUANT TO 11
U.S.C. § 327 AND APPROVING
AUCTIONEER'S PROPOSED
COSTS**

DATE: February 9, 2021

TIME: 10:00 a.m.

PLACE: Courtroom "1539"

24 In re

25 LYDDA LUD, LLC,

27 Debtor.

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- ☒ Affects Both Debtors
- ☐ Affects Coldwater Development, LLC only
- ☐ Affects Lydda Lud, LLC only

Give Back, LLC ("Give Back") hereby submits "Give Back LLC's Limited Response to Chapter 11 Trustee's Motion for Order Approving Retention of ThreeSixty Asset Advisors, LLC and WFS Inc. dba Tranzon Asset Strategies As Auctioneers Pursuant to 11 U.S.C. § 327 and Approving Auctioneer's Proposed Costs" (the "Response"), in response to the "Chapter 11 Trustee's Motion for Order Approving Retention of ThreeSixty Asset Advisors, LLC and WFS Inc. dba Tranzon Asset Strategies As Auctioneers Pursuant to 11 U.S.C. § 327 and Approving Auctioneer's Proposed Costs; Memorandum of Points and Authorities and Declarations of Sam S. Leslie, Jeffrey J. Tanenbaum, and Michael C. Walters in Support Thereof" (the "Motion"), filed by Sam S. Leslie (the "Trustee"), the duly appointed, qualified, and acting chapter 11 trustee for the estates of the debtors Coldwater Development, LLC ("Coldwater") and Lydda Lud, LLC ("Lydda" and together with Coldwater, the "Debtors"), and represents as follows:

I.

PREFATORY STATEMENT

As this Court knows, Give Back is entitled to credit bid up to the full face value of its secured claim pursuant to 11 U.S.C. § 363(k). See RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 132 S. Ct. 2065, 182 L. Ed. 2d 967 (2012). on more than one occasion, both this Court and the Debtors have been repeatedly advised by Give Back that, in the event no buyer is located, Give Back reserves the right to acquire the lots by credit bid. Although Give Back has no opposition to the Trustee's employment of an auctioneer to assist him in marketing the Debtors' lots, Give Back questions the manner of compensation in the event of a statutory credit bid.

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1 Presently, the Trustee proposes to compensate the auctioneers as follows:
2 Commission. A 3% buyer's premium ("Buyer's Premium")
3 will be charged to the winning bidder at the auction sale.
4 This fee is based on the highest bid received at the auction
5 sale and will be added to the high bid.

6 a. Buyer's Broker. In the event the Property is
7 purchased by a third party represented by a registered
8 broker, the buyer's broker will be paid 1% of the high bid, to
9 be paid from the Buyer's Premium through escrow. The
10 remaining 2% will be paid to the Auctioneers. In the event a
11 third party buyer is not represented by a broker, 1% of the
12 Buyer's Premium will be rebated back to the estate, with the
13 remaining 2% paid to the Auctioneers.

14 b. Stalking Horse. In the event the Trustee accepts a
15 Stalking Horse bid by 5:00 p.m., Pacific Standard Time
16 February 8, 2022, and the Stalking Horse purchases all
17 Properties for the amount of their Stalking Horse Bid, no
18 Buyer's Premium shall apply to the Stalking Horse Bid, and a
19 fee of .5% of the purchase price will be payable to
20 Broker/Auctioneer at closing. Alternatively, in the event the
21 Stalking Horse Bidder purchases less than all six Properties
22 at the Sale, or the Stalking Horse is the high bidder at the
23 Sale for a price higher than the Stalking Horse Bid, then the
24 Stalking Horse Bidder shall be assessed the full Buyer's
25 Premium which shall be distributed as per Section 16i of the
26 Listing Agreement (or section 9(a) above).

27 So while the Motion sets forth the compensation to be paid in the event of
28 either a stalking horse or a third party bid, there is no discussion of what compensation, if

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1 any, the auctioneers are entitled to receive if Give Back acquires the lots by means of a
2 statutory credit bid. Give Back certainly does not believe any buyer's premium would or
3 should be payable to the auctioneers in such a scenario. If the Trustee believes
4 differently, he needs to explain why the auctioneers should be entitled to any commission
5 if the lots are sold by credit bid and, if he contends they are entitled to such a
6 commission, the proposed amount.

7 In addition, the Motion contemplates that the Trustee may see approval of a
8 sale that does not include all six lots. In this event, Give Back continues to assert that,
9 unless the price being paid for any subset of lots is greater than the face value of Give
10 Back's lien, then the Court cannot approve such a sale. Give Back's deed of trust spans
11 all six lots and the Court cannot authorize a sale that only pays a portion of Give Back's
12 lien for a portion of its collateral. This issue, obviously, can be addressed at the time any
13 sale motion is filed by the Trustee, but Give Back thinks it important to put the Trustee
14 and interested parties on notice now.

15 **II.**

16 **CONCLUSION**

17 In sum, Give Back has no objection to the employment of the auctioneers
18 provided the listing agreement is clarified to exclude any premium from being paid in the
19 event Give Back acquires the lots by credit bid. To the extent the Trustee or the Court
20 disagree, the order must reflect what transpires if the lots are lost through a statutory
21 credit bid.

22 DATED: February 7, 2022

SulmeyerKupetz
A Professional Corporation

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24
25 By: /s/ Daniel A. Lev
26 Daniel A. Lev
27 Attorneys for Give Back, LLC
28

1 DATED: February 7, 2022

Law Offices of Ronald Richards & Associates, APC

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By: /s/ Ronald Richards

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Ronald Richards

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Attorneys for Give Back, LLC

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **GIVE BACK LLC'S LIMITED RESPONSE TO CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING RETENTION OF THREESIXTY ASSET ADVISORS, LLC AND WFS INC. DBA TRANZON ASSET STRATEGIES AS AUCTIONEERS PURSUANT TO 11 U.S.C. § 327 AND APPROVING AUCTIONEER'S PROPOSED COSTS** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) February 7, 2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached ECF List

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) February 7, 022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

By Personal Delivery

The Honorable Sheri Bluebond
U.S. Bankruptcy Court
Roybal Federal Building
Bin outside of Suite 1534
255 E. Temple Street
Los Angeles, CA 90012

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 7, 2022

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

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